IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. ——

In re DISBARMENT OF JOSEPH RUBINSTEIN AND CHARLES RUBINSTEIN, ATTORNEYS AT LAW

JOSEPH RUBINSTEIN AND CHARLES RUBINSTEIN, PETITIONERS

MOTION TO DISPENSE WITH PRINTING AND SERVICE OF PORTIONS OF THE RECORD.

Counsel for the petitioners in this case file herewith their petition for a Writ of Certiorari to the Supreme Court of the State of Ohio accompanied by certified copies of the record of the proceedings in the Court of Common Pleas, Cuyahoga County, Ohio, in the Court of Appeals for Cuyahoga County and in the Supreme Court for the State of Ohio together with a certified copy of the Bill of Exceptions including all the testimony taken in the above entitled case.

1. The nature of this case and the questions presented by the petition for a Writ of Certiorari have been set forth in the foregoing petition for a Writ of Certiorari.

2. The sole federal question involved is whether the disbarment of the petitioners without any evidence of misconduct involving moral turpitude constituted a denial of due process of law, denial

of the equal protection of the laws and an impairment of the obligation of the contract. The Bill of Exceptions filed in this Court consists of 807 pages including about 85 exhibits. The testimony is in question and answer form. The petitioners have reduced this Bill of Exceptions to narrative form consisting of 109 pages which includes all the testimony heard in the above entitled proceeding that would be necessary or convenient in the determination of the case at bar. The petitioners have received an estimate that it would cost more than $1,700 to print the entire record including the Bill of Exceptions.

3. The petitioners on the fourteenth day of May, 1940, submitted to the Trial Committee, consisting of Charles Auerbach, James Dolphin and George Brown, a copy of the narrative statement of the testimony in the said Bill of Exceptions and on the twentieth day of May, 1940, delivered to them a typewritten copy of the proposed petition for a Writ of Certiorari herein and requested the said committee to enter into a stipulation subject to the approval of the Court of Common Pleas, Cuyahoga County, that the proposed narrative form of testimony contained all the testimony necessary and convenient for the proper consideration and review of the judgment herein.

On the twenty-first day of May, 1940, the Trial Committee declined to enter into any stipulation for the reduction of the record giving as their reason therefor that the findings of fact and opinions of law had not been included and that the resume of testimony is not in full accord with the actual testimony as the record discloses.

4. The time for filing a Petition for Certiorari in this Court will expire on May 28, 1940. The Trial Committee has offered no suggestions as to any testimony that has been omitted or any testimony that has not been truthfully stated in the narrative submitted and is obviously unwilling to take any steps that will condense the record for the convenience of the court or the lessening of the burdens of the petitioners.

Furthermore, the docket and journal entries in the Court of Common Pleas and in the Court of Appeals are so substantially identical in both cases that the petitioners sought to have the committee stipulate that only the journal entries and docket entries in the case of Joseph Rubinstein be printed and that the same be considered as representative of the similar proceedings that were had in the case of Charles Rubinstein. This also the Committee has refused to approve.

5. The printing of the entire record including the voluminous Bill of Exceptions will impose on the petitioners a grievous financial burden which they are ill-prepared to meet and will involve great expense and hardship to the petitioners. Petitioners, therefore, move that they be relieved from printing the entire Bill of Exceptions and that they be permitted to print in lieu thereof the narrative form of such Bill of Exceptions heretofore submitted to the Trial Committee, a true copy of which has been filed with the Clerk of this Court. The petitioners further move that they be relieved from printing the journal entries and docket entries in the Court of Common Pleas and in the Court of Appeals in the case of Charles Rubinstein

and that the printing of the like proceedings in the case of Joseph Rubinstein may be regarded by this Court as representative of the corresponding proceedings had in the case of Charles Rubinstein.

If the Trial Committee object to consideration of the case on the merits upon a printed record so limited, we suggest that they include in their response to the petition for a Writ of Certiorari a specification of the additional matters which they believe should be included in the printed record, together with an explanation of its materiality to the issues presented by the petition. If this Court determines that any additional matter is material, it could order the printing of such matter.

WHEREFORE, it is prayed: (a) That the Court rule that the accompanying petition for Writ of Certiorari is properly filed upon the record now on file in this Court; (b) that it consider and determine the petition for Certiorari in the case at bar upon the record filed herein omitting in the printing thereof the Bill of Exceptions as certified and substituting therefor the condensed narrative statement of the testimony filed herewith and omitting therefrom the docket and journal entries in the Charles Rubinstein case, the like entries in the case of Joseph Rubinstein to be considered as representative of similar proceedings had in the case of Charles Rubinstein; (c) that it rule that the service of the petition for Certiorari and this motion which petitioners are now making upon the Trial Committee and the service of printed copy of the condensed record after this Court shall have granted this motion and the said

record shall have been printed constitutes sufficient compliance with the rules of this Court.

Respectfully submitted,

BRIEN MCMAHON,
MARTIN J. MONAHEN,
Attorneys for Petitioners.